

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In Re: NETWORK ENGINES INC.,)
SECURITIES LITIGATION)
)

CASE NO. 03-12529-JLT

)

)

)

)

**LEAD PLAINTIFFS' MOTION FOR AN EXTENSION OF TIME
TO FILE AND BRIEF THEIR MOTION FOR CLASS CERTIFICATION**

Lead Plaintiffs hereby request leave of the Court to extend the time for Lead Plaintiffs to file and brief their motion for class certification until after the completion, on October 5, 2005, of court-ordered settlement efforts. Lead Plaintiffs request that the following schedule be ordered to govern the briefing and discovery related to class certification, in the event that no proposed settlement has been reached by the time the parties report back to the Court on October 11, 2005: (i) Lead Plaintiffs will file their motion for class certification on or before October 25, 2005; (ii) Defendants shall have until January 6, 2006 to complete class-related discovery and to oppose the motion for class certification; and (iii) Lead Plaintiffs will file their reply on or before February 20, 2006.

In support of this motion (the “Motion), Lead Plaintiffs state the following:

1. On July 7, 2005, the Court entered a Discovery Order (the “Order”) that ordered the parties to focus primarily on their “settlement efforts,” and to report back to the Court concerning those efforts on October 11, 2005. The Order also authorized, *inter alia*, the parties’ Proposed Discovery Plan and Schedule for Filing of Motions (together, the “Schedule”) set forth in the Parties’ Joint Statement Pursuant to Local Rule 16.1(d).

Pursuant to the Schedule, which was submitted by the parties prior to the hearing in which the Court ordered the parties to focus on and conclude their nascent settlement efforts on or before October 5, 2005, Lead Plaintiffs were to file their motion for class certification on or before August 5, 2005, and discovery with respect to class certification was to be concluded by October 5, 2005. Lead Plaintiffs have not yet filed their motion and defendants have just served deposition notices for the named plaintiffs seeking depositions (in most instances on less than two weeks' notice) in mid-September.

2. An extension of the deadlines for briefing class certification and conducting relevant depositions is necessary to effectuate the parties' ongoing settlement efforts, which were ordered by the Court. The parties have scheduled a settlement meeting for the week of September 12, 2005. If the parties' efforts are successful, unnecessary and costly deposition discovery and motion practice will be averted.

3. Lead Counsel recognize that they have missed the deadline for filing Lead Plaintiffs' motion for class certification. Even if Lead Counsel had not, we would still have made a request, albeit a timely one, for an extension to accommodate the ongoing Court-ordered settlement efforts with Defendants. Extending the deadline will spare both parties from the expense and burden of preparing potentially unnecessary discovery and briefing, and is in the spirit of the Court's order that the parties focus first on the settlement negotiations.

4. Defendants have reserved their position on this Motion.

WHEREFORE, Lead Plaintiffs respectfully request that this Court grant their motion to extend the time for Lead Plaintiffs to file and brief their motion for class certification until after the completion of Court-ordered settlement efforts.

Dated: September 9, 2005

Respectfully submitted,

MOULTON & GANS, P.C.

By: /s/ Nancy Freeman Gans

Nancy Freeman Gans, BBO #184540
33 Broad Street, Suite 1100
Boston, Massachusetts 02109-4216
(617) 369-7979

Local Counsel

**MILBERG WEISS BERSHAD
& SCHULMAN LLP**

Rachel S. Fleishman
Andrew M. Wilmar
One Pennsylvania Plaza
New York, New York 10119-0165
(212) 594-5300

Lead Counsel for Plaintiffs

**LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP**

Samuel H. Rudman
David A. Rosenfeld
200 Broadhollow Road, Suite 406
Melville, NY 11747
(631) 367-7100

*Attorneys for Plaintiffs Sergio and Ricardo
Guerrera*

LOCAL RULE 7.1 CERTIFICATE

I, Rachel S. Fleishman, hereby certify that I have conferred with Daniel W. Halston, Wilmer Cutler Pickering Hale and Dorr LLP, who reserves Defendants' position as to Lead Plaintiffs' motion to extend the time for Lead Plaintiffs to file and brief their motion for class certification until after the completion of court-ordered settlement efforts.

/s/ Rachel S. Fleishman
Rachel S. Fleishman

CERTIFICATE OF SERVICE

I, Nancy Freeman Gans, hereby certify that a true copy of the above document was served upon each party by mailing a copy of same, postage prepaid, to all counsel of record on September 9, 2005.

/s/ Nancy Freeman Gans
Nancy Freeman Gans